



New York City Economic Development Corporation

February 18, 2011

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, Northeast
Washington, D.C. 20549-1090

Re: Comment Letter on Release No. 34-63576
File No. S7-45-10

Dear Ms. Murphy:

New York City Economic Development Corporation ("NYCEDC") is submitting this comment letter with respect to the proposed new Exchange Act rules 15Ba1-1 through 15Ba1-7 (the "Proposed Rules") of the Securities and Exchange Commission to implement certain provisions of Section 975 of Title IX of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). While NYCEDC applauds the goal of insuring that municipal entities receive fair, competent and unbiased advice with respect to their financial matters, we believe that the Proposed Rules could be read in an overly broad, unintended manner so as to severely increase the operating costs of municipal entities and materially impair their efficacy.

NYCEDC is a not-for-profit corporation organized under the New York State Not-for-Profit Corporation Law (the "NFPCL"). The certificate of incorporation of NYCEDC defines its purposes as promoting the economic growth and business prosperity of the City, coordinating the financial programs and incentives available to businesses in the City, increasing business activity and business investment in the City and lessening the burdens of government. Its mission is to encourage economic growth in each of the five boroughs of New York City by strengthening the City's competitive position and facilitating investments that build capacity, generate prosperity and catalyze the economic vibrancy of City life as a whole.

The majority NYCEDC's members are appointed by the Mayor. The authorized number of members of NYCEDC is 27 and the members comprise all of the directors of NYCEDC. The members are appointed as follows:

- (i) 16 are appointed by the City's Mayor (six of whom are appointed by the Mayor directly, five of whom are appointed by the Mayor upon nomination of the five Borough Presidents, and five are appointed by the Mayor upon nomination of the Speaker of the City's Council),
- (ii) one is appointed by the Mayor to be the Chairperson following a consultation with a prominent business association, and
- (iii) ten are appointed by the Chairperson from a list of persons approved by the Mayor.

In addition to the Mayor's ability to control NYCEDC's membership and directors, the City controls NYCEDC's activities through two contracts between NYCEDC and the City under which NYCEDC performs economic development services for the City for compensation. The compensation and other monies payable pursuant to the City contracts comprise virtually all of NYCEDC's revenues. The

contracts require NYCEDC to obtain the approval of the City's Deputy Mayor for Economic Development (the "Deputy Mayor") before undertaking any project. The contracts also require that NYCEDC's members include an employee of the City's Law Department. Pursuant to the contracts, the City extends the full services of its Law Department to NYCEDC for all legal purposes, including representation in NYCEDC's development projects as well as in litigation. As required by NYCEDC's contracts with the City, NYCEDC's employees are subject to background investigations conducted by the City's Department of Investigation and to the conflicts of interests laws contained in the City's Charter.

In short, given the control exercised by the City over NYCEDC's membership, directors, funding and activities, and NYCEDC's close working relationship with City agencies, it is clear that NYCEDC is an instrumentality of the City and, therefore, a "municipal entity" under the Dodd-Frank Act and the Proposed Rules, and that employees of NYCEDC are employees of a "municipal entity."

In accordance with its contracts with the City, at the direction of the Deputy Mayor, NYCEDC provides a variety of support type services to various City related entities that have been created to accomplish specific City objectives. The City's Mayor controls the appointment of at least the majority of the members of these entities and, therefore, the election of their directors. The entities currently served by NYCEDC are briefly described below, and it is anticipated that additional City-related entities may be formed in the future for which NYCEDC will provide various and like support services:

New York City Industrial Development Agency ("IDA"), created by an act of the New York State Legislature to promote economic development by providing financial assistance to private entities through conferring tax incentives and through conduit issuances of municipal bonds;

New York City Capital Resource Corporation ("CRC"), organized by NYCEDC under the NFPCL at the direction of the Mayor to promote economic development by providing financial assistance to private entities through conduit issuances of municipal bonds;

Trust for Cultural Resources of The City of New York (the "Trust"), created by an act of the New York State Legislature to assist cultural institutions in the City to develop their facilities by providing financial assistance through conduit issuances of municipal bonds;

Coney Island Development Corporation ("CIDC"), organized by NYCEDC under the NFPCL to spearhead and to implement a comprehensive planning process for Coney Island and to create a coordinated economic development strategy for the area;

Hudson Yards Development Corporation ("HYDC"), organized by the City under the NFPCL to transform a blighted area of the City into a vibrant, pedestrian-friendly, transit-oriented mixed-use district that will accommodate a major and vital expansion of the Midtown Manhattan central business district, as well as job growth and new housing for the City's growing population;

Brooklyn Bridge Park Corporation ("BBPC"), organized by the City under the NFPCL to construct and to operate a City-owned renovated waterfront area, including a public park; and

Governors Island Corporation ("GIC"), organized by the City under the NFPCL to bring Governors Island (a former U.S. naval base located in the New York harbor and now owned by the City) back to life including new infrastructure and the planning and construction of a new park and public space.

IDA, CRC, the Trust and CIDC have no employees. HYDC, BBPC and GIC have a relatively small number of employees (almost all of whom are professionals) who are focused on their missions, but they lack sufficient administrative personnel to handle their needs. The City has determined that it is more efficient and maximizes cost effectiveness to have NYCEDC perform various services for these entities than to staff each entity fully on a separate basis. This use of NYCEDC centralizes the performance of services, permitting a smaller number of skilled professionals to accomplish the services and avoiding duplicative and costly staffing, an especially important point in this time of scarce government resources. The services that NYCEDC performs for these entities include: (i) cash management and investment in specified investment categories that follow the City's investment guidelines for City money; (ii) administration of employee pension plans; and (iii) in the case of IDA and CRC, providing basic information to applicants for bond financing assistance as to the various types of bond financing available including fixed interest rate bonds and variable interest rate tender bonds, and providing staff presentations to the directors of IDA and CRC for consideration in authorizing the issuance of bonds for eligible project applicants or for amending existing bond documentation. The investment of proceeds of bonds issued by IDA or CRC remains solely within the direction of the related project company.

We do not believe that the above-described activities of the NYCEDC staff are the kinds of activities that would require NYCEDC or its staff to register as municipal advisors under the Proposed Rules and we do not believe they are the types of activities that Congress sought to regulate by enacting the Dodd-Frank Act. Garden variety cash management functions are not the kind of "investment strategies" that were the concern of the drafters of the Dodd-Frank Act where, as is the case with NYCEDC, cash management activities do not involve guaranteed investment contracts, derivatives, swaps or other strategic investment vehicles, nor does NYCEDC or its staff engage in such activities in the regular course of their business.

Although employees of NYCEDC provide preliminary basic information to applicants for bond financing from IDA or CRC, when applicants finally determine to pursue such financing they have also received much more detailed, sophisticated, tailor-made advice from their counsel, accountants and bankers. No recipient of IDA or CRC financial assistance has gone forward without employing its own legal counsel. Further, while IDA and CRC issue municipal bonds to assist particular applicants, neither entity acts to place, or seek purchasers for, the municipal bonds issued by IDA or CRC, nor does either such entity provide advice or negotiate the structure, terms or security for the municipal bonds and related financial arrangements; rather, the applicant and its own counsel, accountants and bankers are solely responsible for all terms and aspects of the financing. Staff presentations to the directors of IDA and CRC describe the arrangements that the applicants have agreed to with bond purchasers, but they do not express opinions as to the advisability of a particular structure for a particular applicant. Instead, staff analysis concentrates more on the type of public economic development benefits the financial assistance is expected to produce, including whether the financial assistance has induced the applicant to proceed with the project, background information on the applicant and its relationship with the surrounding community, the cost to the City of foregone taxes, the wages expected to be paid to persons working at the financed facility and a basic description of the rates and terms of the proposed financial assistance and pro forma financial statements..

The Dodd-Frank Act excludes from the definition of "municipal advisor" a "municipal entity" and employees of a municipal entity. Because NYCEDC is a municipal entity, we believe even if services performed by NYCEDC or its employees are viewed as financial services under the Proposed Rules, neither NYCEDC nor its employees should be deemed to be municipal advisors when performing services for other municipal entities that are City-related municipal entities. The establishment of separate municipal entities for separate municipal purposes is quite common, and though each may constitute a separate legal entity, for all intents and purposes, they constitute part of the same family, so to speak, of the single municipal entity for whose benefit they were created. Of course, the City could

duplicate staff for each one of its economic development entities, but this would not make prudent fiscal sense, especially in times such as these during which every local government is seeking the most cost efficient manner in which to operate.

Just as, for example, agencies, authorities and instrumentalities of a single political subdivision are considered related municipal entities, the employees of such related entities should similarly be considered the employees of a single municipal entity for purposes of the Proposed Rule. It would not appear that the abuses sought to be remedied under the municipal advisor provisions of the Dodd-Frank Act through subjecting these advisors to registration and regulatory oversight, have relevance where the “advisors” are in fact employees of related entities serving a single municipal entity.

We further believe that the suggestion in the Proposed Rules that appointed directors of a municipal entity are to be considered municipal advisors to the entity has no merit and, if adopted, would be extremely detrimental to the effective, intelligent and efficient workings of municipal entities that have directors.

Members of a governing body of a municipal entity do not provide advice with respect to municipal financial products or the issuance of municipal securities to or on behalf of the entity on whose board they serve. Rather, they exercise the statutory powers of such municipal entity in accordance with State law and the entity's certificate of incorporation and by-laws. In the case of municipal entities that issue debt, the members make decisions as to the authorization and issuance of municipal securities and, in connection therewith, are sometimes themselves the recipients of advice from third parties. In that process they discuss, deliberate and vote, but they do not provide advice. Since they do not provide advice, they do not fall under the statutory definition of municipal advisors under the Dodd-Frank Act, and to subject them to the obligations imposed on municipal advisors by regulation would represent an unprecedented overreaching by the Commission that will impose a substantial burden on municipal issuers – precisely the entities that Congress was seeking to protect under these provisions of the Dodd-Frank Act.

Further, the rationale of the Proposed Rules that the exclusion in the Dodd-Frank Act from the definition of “municipal advisor” for “employees of a municipal entity” should only include any person serving as an elected member of the governing body of the municipal entity (to the extent that person is acting within the scope of their role as an elected member of such governing body) makes no sense to us. A distinction is sought to be drawn between elected members of a governing body acting within the scope of their roles (or ex-officio members who serve by virtue of their elected offices) and those members (ex officio or otherwise) who are appointed (to their ex officio roles or directly to the governing body) but not elected. The stated rationale for this distinction is that, unlike elected officials and elected ex-officio members, appointed members “are not directly accountable for their performance to the citizens of the municipal entity”.

NYCEDC sees no basis for this distinction. Implicit within the rationale given in the Proposed Rules is that municipal entities are lacking in statutory or regulatory governance for members of their governing bodies, with the only redress and accountability being at the polls in the case of an elected member. However, every State, and every political subdivision within every State, has typically established a complex overlay of statutory and regulatory constraints upon the actions of governmental board members, whether elected or appointed. New York State's Public Authorities Accountability Act establishes a fiduciary obligation for every director by requiring that board members of state and local authorities, which include all of the municipal entities described herein, “perform each of their duties as board members, including but not limited to those imposed by [this section,] in good faith and with that degree of diligence, care and skill which an ordinarily prudent person in like position would use under similar circumstances, and may take into consideration the views and policies of any elected official or body, or

other person and ultimately apply independent judgment in the best interest of the authority, its mission and the public.”

The consequence of requiring non-elected directors of municipal entities to register as municipal advisors is frightening to contemplate. Many appointed members to governing boards are appointed by reason of their expertise in the areas of value to the municipal entity. But if their appointment carries with it the risk that, by voicing their opinion before the board, it would subject them to having to register and be regulated as a municipal advisor, why would any choose to serve? Governing boards would shrink to only elected officials and municipal entities would be denied the benefits of the perspectives, background and knowledge of non-elected members.

For the reasons stated above, NYCEDC respectfully requests that the Proposed Rules be clarified to recognize that (i) an employee of a municipal entity should also be deemed an employee of all other related municipal entities for purposes of excluding employees of municipal entities from the statutory definition of “municipal advisor”, (ii) the providing of “advice” for purposes of the same above-stated definition should track the standard suggested elsewhere within the Proposed Rules, i.e., it is not “advice” if the same is being provided by a person acting within the scope of his or her role as a member of the governing body of the municipal entity, and (iii) the distinction between elected and appointed members of the governing body should be eliminated such that a member of the governing body should simply be deemed an employee of the related municipal entity. We respectfully suggest that the statutory intent would be clarified by a clear statement to the effect that a board member acting within the scope of his or her obligations under applicable law shall not be deemed to be providing advice within the meaning of Section 15B(e)(4)(A)(i) of the Dodd-Frank Act.

We very much appreciate this opportunity to comment on the Proposed Rules. Should you have any questions concerning these comments, or would like to discuss these comments further, please feel free to contact the undersigned at (212) 312-3563 or by email at mjones@nycedc.com. We would also welcome the opportunity to discuss the matters addressed in this letter in an in-person meeting with the Commission’s staff and would look forward to such a.

Thank you for your consideration.

Very truly yours,

NEW YORK CITY ECONOMIC DEVELOPMENT
CORPORATION

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